

REMARKS

Claims 1, 3-10 and 12-40 are pending in the present application. Claims 1, 10, 19, 22, 23, 31, 39 and 40 are independent claims. Claims 2 and 11 have been canceled, and claims 22-40 have been added by this Amendment.

It is believed that this Amendment, in conjunction with the following remarks, place the application in immediate condition for allowance or at least presents the claims in better form for consideration on Appeal. Accordingly, entry of this Amendment and favorable consideration of the application are respectfully requested in view of the foregoing amendments and the following remarks. In particular, because the 10/16/2008 Rejection was improperly made final, (see remarks in next section) all amendments filed in this Amendment are requested to be entered by the Examiner.

Improper Finality

As an initial matter, Applicant notes that the Examiner improperly made the 10/16/2008 rejection final because the Examiner added a new art grounds of rejection that was neither (i) necessitated by Amendment, nor (ii) necessitated by an IDS.

As noted in MPEP 706.07(a), "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." (emphasis added, see MPEP 706.07(a)).

The Examiner's new rejection of claim 20 under 35 U.S.C. § 103(a) based on Iwai in view of Applicant's Admitted Prior Art (AAPA) on Page 6 of the 10/16/2008 Final Rejection was not present in the Examiner's non-Final Rejection of 2/28/2008, claim 20 was not amended

in Applicant's response of 6/26/2008, nor was an IDS filed during the period set forth in 37 CFR 1.97(c). As such, Applicant respectfully requests that the Examiner withdraw the finality of the 10/16/2008 Rejection. Pursuant to MPEP 706.07(d), "If, on request by applicant for reconsideration, the primary examiner finds the final rejection to have been premature, he or she should withdraw the finality of the rejection."

Allowable Subject Matter

Applicant appreciates the Examiner's indication that claims 2, 11 and 21 would be allowable if rewritten into independent form. By the present Amendment, claims 2 and 11 have been canceled, and their recitations have been substantially moved into independent claims 1 and 10, respectively. Further, independent claim 19 has been amended in a similar manner, and Applicant requests an indication that independent claim 19 is allowed for reasons similar to those articulated by the Examiner with regard to claims 2, 11 and 21. Further, newly added independent claim 22 has features similar to those of presently amended independent claim 1, with independent claim 22 being directed to a computer-readable medium instead of a process (e.g., for support, see at least [0020]-[0021] of the Specification).

Accordingly, Applicant respectfully requests an indication of allowance for independent claims 1, 10, 19 and 22, as well as the claims dependent thereon.

35 U.S.C. 102(b) - Iwai

Claims 1 3-5, 9-10, 12-14, 18 and 19 are rejected under 35 U.S.C. § 102(b) as being anticipated by US Patent No. 5,815,795 ("Iwai"). Applicant respectfully traverses this art grounds of rejection.

As discussed above, this rejection is now moot with respect to currently pending claims 1, 3-5, 9-10, 12-14, 18 and 19 because Applicant has amended each of independent claims 1, 10 and 19 with subject matter indicated to be allowable by the Examiner. Independent claim 22, discussed above, is allowable for similar reasons as independent claim 22 also includes the subject matter indicated as allowable by the Examiner.

In the current Amendment, Applicant further added claims 23-40, including independent claims 23, 31, 39 and 40. Independent claims 23, 31, 39 and 40 each include subject matter similar to dependent claims 3 and/or 12, wherein oscillation is detected based on a measured signal quality of base station signals. Thus, to expedite prosecution, Applicant will address the remarks in this section to newly added claims 23-40 based on the remarks from the Examiner in the Office Action of 10/16/2008 related to dependent claims 3 and 12.

With respect to claims 3 and 12, the Examiner alleges that Iwai discloses measuring signal quality at a repeater and determining oscillation based on the measured signal quality at Col. 3, lines 14-21 and Col. 3, lines 46-53 of Iwai (e.g., see Page 3 of the 10/16/2008 Office Action). The cited sections of Iwai state the following:

The oscillation detecting apparatus further comprises deciding means for deciding that the wireless repeater is oscillating when the first judging means judges that the direct current component of the power level signal has reached the predetermined upper-limiting level, and when the second judging means judges that the alternating current component of the power level signal is smaller than the predetermined criterion level.

(See Col. 3, lines 14-21 of Iwai)

The wireless repeater further comprises first judging means for judging whether the direct current component of the power level signal has reached a predetermined upper-limiting level or not, and second judging means for judging whether the alternating current component of the power level signal is smaller than a predetermined criterion level or not. The wireless repeater further comprises deciding means for deciding that the wireless repeater is oscillating when the first judging means judges that the direct current component of the power level signal has reached the predetermined upper-limiting level, and when the second judging means judges that the alternating current component of the power level signal is smaller than the predetermined criterion level.

(See Col. 3, lines 46-53 of Iwai)

Applicant respectfully submits that, in context, it is clear that the above-reproduced excerpts from Iwai refer to the determination of oscillation based on a power level output from the repeater; not the power level (or signal quality) of signals received at the repeater from a base station. This is supported by Iwai in the following section where the envelope of the repeater's output signal is discussed:

The oscillation detecting apparatus 1 is shown in FIG. 4 as comprising a band-pass filter 14 besides the envelope detector 11 and the low pass filter 12. The envelope detector 11 is designed to receive a signal and produce an envelope of the received signal. The envelope detector 11 may be considered to be a device producing a power level signal varied in proportion with an amplitude of the output signal. Specifically, the power level signal is increased when the amplitude of the output signal is increased. Conversely, the power level signal is decreased when the amplitude of the output signal is decreased. The power level signal may be not necessarily direct proportional to the amplitude of the output signal. For example, the power level signal may be formed on the basis of the output signal through square detection techniques. The power level signal corresponds to the envelope of the output signal but, if desired, the power level signal may be a signal showing fluctuation of a physical value that is representative of intensity of the output signal.

(Emphasis added) (See Column 7, lines 4-22 of Iwai)

In view of the excerpted portion of Iwai produced above, Applicant respectfully submits that Iwai does not disclose or suggest "using the communication signals processed at the wireless communication device circuit to determine if the repeater system is in oscillation by measuring signal quality of the communication signals from a base station, and determining oscillation if the signal quality meets a certain criteria" as recited in independent claim 23 (Emphasis added), and

similarly recited in independent claims 31, 39 and 40. Again, transmission output power at a repeater is not indicative of base station signal quality.

As such, claims 24-30 and 32-38, dependent upon independent claims 23 and 31, respectively, are likewise allowable over Iwai at least for the reasons given above with respect to independent claims 23 and 31, respectively.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection, and further requests an indication of allowance for newly added claims 23-40.

35 U.S.C. 103(a) – Iwai in view of Seki

Claims 6-8 and 15-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Iwai in view of U.S. Publication No. 2004/0248581 (“Seki”). Applicant respectfully traverses this art grounds of rejection.

Applicant respectfully submits that a review of Seki indicates that Seki is insufficient to cure the suggestion and disclosure deficiencies of Iwai as discussed above with respect to independent claims 23, 31, 39 and 40.

Applicant respectfully requests that the Examiner withdraw this art grounds of rejection, and further requests an indication of allowance for newly added claims 22-40.

Reconsideration and issuance of the present application is respectfully requested.

CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue, or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In light of the amendments contained herein, Applicants submit that the application is in condition for allowance, for which early action is requested. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026. If a fee is required for an extension of time under 37 CFR 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Dated 12/14/08

Respectfully submitted,

By: 

Linda G. Gunderson, Ph.D.
Attorney for Applicants
Reg. No. 46,341

QUALCOMM Incorporated
Attn: Patent Department
5775 Morehouse Drive
San Diego, California 92121-1714
Telephone: (858) 651-7351
Facsimile: (858) 658-2502